



Report of the Director for Social Services

Procurement Scrutiny Performance Panel – 13th September 2021

Procurement & Commissioning–Social Services Directorate

Purpose:	To brief the Scrutiny Panel with a high level overview of procurement processes and activity at Swansea Council's Social Services Directorate to help inform the Panel Inquiry
Content:	The report gives an overview of procurement in Swansea Council's Social Services Directorate
Councillors are being asked to:	Consider the information given as part of the inquiry into procurement
Lead Councillors:	Councillor Mark Child Councillor Elliot King Councillor Alyson Pugh Councillor Louise Gibbard
Lead Officer & Report Authors:	Dave Howes, Director of Social Services Jane Whitmore Strategic Lead Commissioner Peter Field, Adult Service Lead Commissioner Chris Francis, Child & Family Lead Commissioner Lee Morgan, Category Manager for Social Care

1. Background and Context

- 1.1 In 2018 we brought together commissioning teams across the Directorate and to further develop the work around commissioning and procurement to ensure coherence with front line service delivery to enable us to;
- Progress the work to develop a single view of the customer
 - Provide a natural enabler to develop to efficiencies
 - Understand need through co-productive techniques
 - Achieve greater efficiency through common approaches and a more coherent, simple and strategic approach to contractors
- 1.2 To progress this work and share resources we created a Commissioning Hub to bring together all commissioning and contracting roles within existing teams in the Social Services Directorate.

- 1.3 It was noted that at that point in time that in order to build capacity across all areas of the commissioning cycle we would need to develop procurement expertise within the commissioning hub. Consideration of the benefits of integrating the procurement function in a formal way to drive forward transformation, ensuring we build shared skills and capacity in an integrated way of commissioning, procurement and contract management is still an area to be explored.

The current version of the Council's Contract Procedure Rules (CPR) came into effect in November 2019 and prior to this all social care contracts were exempt from the requirements of CPR. The new CPR for the Council continued to take into account the complexities of social care procurement and therefore a number of exemptions were maintained at the discretion of the Director of Social Services, these are contained within CPR 1.10.

- 1.4 All public sector procurement (including Health & Social Care) is regulated and governed by directives and legislation set out in the European Union (EU) Procurement Directives. In 2015 the Legislation which governs public procurement was also brought into force, The Directives have been implemented into national law in the UK by Regulations. The current Regulations came into force on 26 February 2015. The Regulations are The Public Contracts Regulations 2015.
- 1.5 The Public Contract Regulations 2015 contain a specific set of rules for certain social, health and education services, this is referred to as the Light Touch Regime (LTR). described in regulations 74- 76 of The Public Contracts Regulations 2015.
- 1.6 As a result, in 2015 a Category Manager from the Procurement Team was dedicated to reviewing and re-tendering contracts classed as social care (including children's, adults, prevention and education services). A Procurement Officer was assigned to assist the Category Manager in September 2016.
- 1.7 This change has had an impact on commissioning, contracting and procurement arrangements in social care; historically there was an embedded culture of relational contracting with external providers and a tradition of rolling over existing contracts and a consequence of this was not only non-compliance but highlighted a knowledge gap in relation to the procurement process.
- 1.8 This knowledge gap has been filled by the support of the dedicated Category Manager for Social Care and the integration of this role has been an invaluable resource for officers across the Social Services Directorate and as a consequence knowledge and compliance has improved.
- 1.9 An integrated commissioning, procurement and contract management approach was highlighted in the last internal audit of Social Care with the recommendation that *"Resources should continue to be allocated to ensuring all social care contracts are compliant with the Council's Contract Procedure Rules and the Public Contract Regulations 2015"*.

- 1.10 Within the Social Services Directorate, there are approximately 133 contracts in place with an approximate annual value of £66 Million. We have adopted a targeted approach to re-tendering contracts and prioritising contracts relating to service areas with large areas of spend. In addition to this spend there is also an additional approximately £25 million on residential and nursing care across the directorate.
- 1.11 This approach continues and has been expanded through the development of a Directorate work plan that enables any non-compliance issues to be addressed and ensure we have a prioritised procurement plan that can be matched against resource available to carry out this work.
- 1.12 The National Commissioning Board (NCB) working in partnership with Social Care Wales has produced guidance around a practical legal guide for commissioners and procurement officer which outlines a modern, outcome based collaborative procurement guide <https://www.wlga.wales/procurement-of-services>, in the production of this guidance the Category Manager was approached for feedback and to comment on how this would benefit the work within Swansea.
- 1.13 The purpose for this guidance was driven by the need to ensure that procurement practice supports the delivery of services in line with the intentions of Welsh Government policy and legislation relating to health and social care services.
- 1.14 The way services are commissioned and the procurement process that entails, needs to change. Understanding how a more flexible, effective and affordable service might be delivered is key to realising the central ambition and expectation of recent legislation.
- 1.15 We have been working towards this approach over the last few years but recognise there is still work to extend and formally embed as we transform services.

2 Impact of Covid

- 2.1 Covid 19 has significantly impacted the contracting and procurement of Social Care services and we have worked continually with our service providers to support them to ensure they are able to deliver and support the most vulnerable within our society.
- 2.2 A Procurement Policy Note (PPN) was issued by the UK Government and endorsed by the Welsh Government in July 2020 to enable the Council to have the flexibility to ensure we continue to:
- Review contract portfolio, including those providing relief due to COVID-19 to maintain delivery of critical services.
 - Work in partnership with suppliers and develop transition plans to exit from any relief as soon as reasonably possible.
 - Work in partnership with providers to ensure sustainability/viability of contracts in the medium to long term.

- Continue to pay providers as quickly as possible to maintain cash flow and protect jobs.
- 2.3 Officers from Procurement and Commissioning Teams have worked on the impact of PANs on current contracts and worked to effectively implement the recommendations from them.
- 2.4 We continue to work to these principles outlined below which as Covid is very much still impacting Social Care 18 months on.
- Review existing contractual relief arrangements made to provide critical services
 - Review existing contracts and not just revert back to business as usual
 - Continue to pay providers promptly to maintain the market, cash flow and jobs
 - Ensure collaborative exit and transition plans are in place
 - Constructive engagement with providers to make adaptations to meet changing demand and need
 - Ensure resource allocation, roles and responsibilities are clear
 - Move towards outcome focussed commissioning
- 2.4 To adapt these principles we have had to ensure we manage the following risks
- Accept that contract waivers will need to be in place as an interim measure
 - Allocate appropriate resource in terms of a Commissioning Officer and Procurement Officer
 - Ensure Financial compliance by all to ensure all processes are in place to make payments
 - Manage impact and risk of contract terminations or failure

3 A brief outline of the Directorate procurement activities

- 3.1 All of our procurement activities are tracked and monitored through a work plan which ensures there is a prioritised procurement/commissioning plan that can be matched against resource available to carry out this work.
- 3.2 A significant of work has been undertaken to make sure we have captured all the areas for development, with a limited amount of resource to complete this.
- 3.3 Monthly meetings take place between commissioning teams and procurement to keep the work plan workplan up-to-date and;
- Ensure compliance
 - Understand and manage the risk
 - Be clear with timescales and who needs to do what
 - Understand and flag capacity issues
 - Join up work where possible to gain efficiencies
 - Feed into the People Commissioning Group
- 3.4 The workplan captures all of the commissioning activity for the Directorate and identifies **133** different areas of contracts, frameworks and service level agreements that are necessary to manage business. The annual value of

these agreements in approximately **£66 Million**, 70% is funded from Core Council budgets and 30% is funded a variety of Grants.

3.5 The table below outlines the areas of work, but as you can see the majority of contracts and spend are on Adult Social Care:

Area	Number of Contracts/ Framework Agreements/SLAs	Percentage % in each service area	Annual Value £	Percentage % in each service area
Adult Services	75	56%	£ 49,738,910	74%
Partnerships & Commissioning	45	34%	£ 8,665,800	13%
Child & Family Services	13	10%	£ 8,111,025	13%
TOTAL	133		£66,515,735	

3.6 The Social Services Directorate procures a broad range of services across many different client groups across the age range, from statutory services to preventative services, delivered through a variety of providers. A summary of the type of services are outlined below:

- Residential Care for older people and younger adults
- Domiciliary Care for older people and younger adults
- Day services for older people and younger adults
- Supported living services (fixed accommodation, floating support and shared lives (similar to adult family placement)
- Sheltered Housing and extra care services for older people
- Carers services
- Advocacy Services (Children & Adults)
- Sensory impairment services
- Managed account services for direct payment recipients
- Assistive technology services
- Residential care for looked after children
- Foster care placements for looked after children
- Overnight residential and foster Short Breaks services for children and young people with a disability.
- Supported accommodation for vulnerable young people, including Care Leavers and those at risk of homelessness
- Personal advisor and other support services for young people aged 16-24.
- Specialist assessment and therapeutic services
- Independent visitor service for looked after children
- Laboratory testing services (DNA and drug and alcohol testing)
- Early Intervention and prevention services for families

- Counselling services for children and young people
- Young Carers Services
- Support services for children with a disability
- Employability Services
- Family Centres and Community Support
- Third sector support services
- Other third sector services, examples included co-production, volunteer and befriending services, advice and information.

3.7 All procurement activity is supported by a qualified Category Manager and Procurement Officer.

4. How the Directorate ensures probity, competence, consistency of approach and alignment with the Councils strategies and objectives

- 4.1. In 2016 under the then Director of People a People Commissioning Group was established as a cross department group to ensure appropriate governance and oversight of commissioning arrangements. These include the People Directorate Commissioning Group. The purpose of the group was to ensure that at a senior level there was an overview of all Commissioning activity in order to support achievement of corporate objectives.
- 4.2. The People Commissioning Group is now chaired by the Director of Social Services and is a joint working group which covers all commissioning activity across Adult Services, Child & Family Services, Education and Housing thus ensuring a consistent approach for the residents of Swansea. Procurement Officers also attend this group.
- 4.3. There is a combination of funding sources derived from, revenue funding and various grant funding sources. Each have their own processes for approval and alignment with the Council's strategies and objectives.
- 4.4. Revenue funding sources are built into the council's annual budget approved by Council under each service area. Any variances would be reported via the usual performance and financial reporting and additional FPR reports.
- 4.5. Grant funding sources have their own approval process and specifics to comply with the terms of conditions that is set out within the grant offer and aligned to the purpose of which the grant is given. These funding conditions and annexed within Invitation to Tender packs and the procurement Category Manager will ensure the procurement activity complies with the relevant grant conditions and the specifics of the grant are included within the procurement documents
- 4.6. The level of support provided by the procurement Category Manager and Procurement Officer will be reflective of contract value, the vulnerability of service user's and the commercial risk.
- 4.7. Through implementing the commissioning processes, we take into account both FPRs and CPRs along with the corporate objectives, legal obligations including Social Services and Wellbeing Act, Public Contract Regulations, Wellbeing of Future Generations Act, Equalities Act and other regional and national drivers

including Social Value / Community Benefits. These requirements and referenced in contract specifications where there is an obvious link.

4.8. Typically procurement processes are designed and implemented with support from a designated social care Category Manager /Procurement Officer and re-procurement options are often sense checked with a range of stakeholders from across the council to ensure compatibility with wider corporate obligations.

4.9. Other cross department groups have been established to ensure appropriate governance and oversight of these arrangements. These include the Housing Support Grant Commissioning Group and various other working groups.

5. Responsibility for procurement, authorisation of transactions, separation of responsibilities for ordering and receiving goods / services and the capacity to contract

5.1 All directorate procurement activity is carried out in accordance with the requirements of the Council's Contract Procedure Rules, which outlines procedures and responsibilities relating to the procurement of goods and services.

5.2 We have devised a directorate process map that links clearly identifies what needs to happen at each stage (Appendix 1)

5.3 Across the directorate, there are Commissioning Officers and Principal Officers responsible for ensuring there are the arrangements and mechanisms in place to procure services appropriately. These individuals link with procurement officers were required to ensure this activity is conducted in accordance with the rules and regulations.

5.4 As an example, many of the individual services commissioned via the contracts and framework agreements established by Commissioning Officer and Principal Officer are then utilised by a range of other Officers and parts of the Department. For example, the decision to commission a residential care service is made by the Head of Service following a social worker assessment. The search (or tender) is then actioned by a designated Placement Officer in another part of the Service. The payment of invoices and financial monitoring is then the responsibility of the commissioning and finance teams.

5.5 Approval limits are set out in the council constitution and/or formal delegation for which detailed records are kept in line with corporate requirements. The Social Services Directorate utilises the Oracle Payment System and all staff are assigned as requisitioners and do not have any buyer roles within the directorate within the system. The Directorate has also been a major user of Contract Purchase Agreements within Oracle to further manage spending.

5.6 Individual transactions are made by different teams depending on the service type. For example care home services are via the departments Abacus system and administered by the departments SCIF team. Supported Living Services

are made via a payments system known as Illy and administered by the adult services commissioning business support team.

- 5.7 Officers are aware that there are thresholds for the signing of contracts as detailed within CPR and the appropriate use of the Council's Seal on contracts.
- 5.8 Each service area has a commissioning lead who will devise a re-procurement plan with support from procurement colleagues. Each procurement will follow an evaluation of the service type, led by the commissioning lead, to determine future needs and anticipated costs. The Procurement Category Manager will support on the procurement options available and making use of the flexibilities permitted under the Public Contract Regulations 2015 and will seek to work on innovation procurement solutions.

6. Ensuring we procure cost effectively and transparently

- 6.1 We ensure we procure in this way via competitive tender wherever possible and where an exemption does not apply Market research is also a tool used to ensure contracts are cost effective.
- 6.2 Historically contracts for many services have been allowed to continue without retender under exemptions permitted by European Directives for social care services (The Public Contracts Regulations 2006).
- 6.3 The introduction of Public Contracts Regulations 2015 as mentioned above and the creation of a Category Manager post for the procurement of social care services has brought a change to procurement practice. A programme for re-procuring all services in line with new obligations is underway. This will involve open competition on price and quality, and publishing of tender notices and contact awards via Sell2Wales.
- 6.4 All tenderers are notified of the outcome and offered feedback on their tenders and all decisions are noted and filed on Share Point for future reference.

7. How we ensure we are procuring locally, ethically and that your procurement activities align with the Wellbeing of Future Generations Act

- 7.1 Our services are commissioned in accordance with our legal duties under the Social Services and Wellbeing (Wales) Act 2014. This legislation is closely related to the Wellbeing of Future Generations Act 2015. Whereas the latter is concerned with improving the holistic well-being of the entire population, the 2014 Act requires us to focus on improving the well-being of those in need of care and support. Thus, the key principles within both pieces of legislation are often identical or similar: e.g. the focus on prevention.
- 7.2 The Council is committed to developing the local economy and supporting local providers. Wherever possible, local service providers are invited to quote for low value contracts and are encouraged to bid for tenders. All service providers are encouraged to register on Sell2Wales and eTenderWales to ensure that they receive notifications of upcoming procurements.

- 7.3 The Council cannot discriminate in favour of local suppliers; contracts are awarded based on the evaluation criteria set out in the invitation to quote/tender. However, we do encourage local organisations to bid for contracts with the Council.
- 7.4 As the type of activities procured are typically services which need to be delivered to individuals in Swansea, this means that service providers usually are local or at least have a presence locally.
- 7.5 We add in requirements for understanding of local needs into our specifications so we can best meet the needs of people in Swansea and promote economic growth in both local private and third sector organisations.
- 7.6 We utilise standard terms and conditions which require providers to evidence commitment to, and have company policies in-place for:
- Community benefits / social value
 - Modern Slavery
 - Equal Opportunities
 - Welsh Language
 - Safeguarding

The SQ (Selection Questionnaire) covers all the areas referenced in para 7.6 , prior to entering into contractual arrangements. All SQ questions are designed to ensure that only service providers that meet our required standards are awarded contracts, any provider failing to meet standards will be rejected from the process. The SQ is a standard document but for Social Care contracts there are specific selection questions that are asked for each contract.

- 7.7 On many occasions, we also hold “meet the ” events to encourage local engagement from providers on main contracts and support market development. One of these events was held in June for the Provision of Temporary Accommodation for Young People.

8 How we ensure procurement activities comply with the general Equalities Duty (as specified in Equality Act 2010 – Public Sector Equality Duty for Wales 2011)

- 8.1 The Coporate process is followed to ensure compliance through the IIA process for screening and full reporting to understand impacts
- 8.2 Where required a more detailed stage 2 evaluation to understand equalities impacts would be undertaken. In nearly all cases, re-procurement is designed to improve rights, entitlements and access to services for people with protected characteristics. Occasionally, particularly in the context of ending services, potential for negative impacts may arise. These situations may result in detailed evaluations to understand and ameliorate the impacts to those potentially affected.

9 Training provided for staff on procurement and tendering process

- 9.1 Training has been provided by the Strategic Lead Commissioner from the Directorate and Social Care Category Manager from Procurement to all commissioning teams.
- 9.2 This covers essentials in relation to procurement legislation, CPR, designing a tender process, developing specifications, different types of procedure, advertising, evaluating and scoring, contract award and giving provider feedback.
- 9.3 An introduction to TUPE course has also been created and delivered by Legal as many of the contracts in this area may involve the application of TUPE.
- 9.4 On-going support is provided by the Social Care Category Manager and the procurement officer throughout the process and the Procurement pages on StaffNet have guidance available to Officers including an Officer guide and guidance on specification writing,
- 9.5 Standard method statement questions, specification, timelines are shared amongst the teams as good practice and the Category Manager has developed a procurement time plan document to assist Commissioning Officers with the process to follow.

10 Joint procurement activities

- 10.1 The people commissioning work plan enables us to identify joint procurement activities and is an enabler for transformation opportunities.
- 10.2 By working together on procurement, and on contract and supplier management, councils and their partners can make the best use of commercial skills, benefit from economies of scale, achieve efficiencies in the use of resources and realise savings.
- 10.3 Cross departmental procurement is required in the sense that the Adults service commissioning team may be procuring services which contribute to children's services objectives, (in the case of young person services or transition from children's to adults arrangements) or housing department objectives (e.g. homelessness services), as examples.
- 10.4 Procurement projects such as this will be coordinated via project boards which are led by adult services commissioning team reps, with appropriate cross departmental representation to ensure shared objectives and responsibilities are met. These different groups and boards feed into the People Commissioning Group.
- 10.5 Regional commissioning and partnership arrangements are in place to oversee any wider joint commissioning responsibilities. A number of work streams are in situ under the West Glamorgan Transforming Complex Care arrangements which will address any joint procurement implications. To date regional arrangements have focused mainly on one party acting as lead commissioner by procuring on the part of partners with arrangements in place for cost sharing as appropriate.

10.6 The Procurement Category Manager is also the national Procurement representative on the National Commissioning Board, which enables a national viewpoint to also be established at a local and regional level.

11 Monitoring procurement activity

11.1 The People Commissioning Group with relevant commissioning sub groups monitors procurement activity, and any issues are escalated as required and appropriate action taken.

11.2 These groups are sighted on all procurement programmes and activity and will approve the commissioning decisions that lead to procurement activity. At an individual contract level, project boards that design and implement the procurement processes typically oversee arrangements.

11.3 Individual contracts will have specifications, which describe performance requirements, and these are monitored by commissioning leads with support from contract monitoring officers. Contract Monitoring arrangements will differ across service areas but may involve a blend of data submission and analysis, service user and other stakeholder feedback and financial reporting. Where possible outcomes for service users will play a key part in understanding quality and performance.

11.4 All contracts are issued utilising the Councils standard terms and conditions for Social Care Services and if required are signed under the Common Seal of the Council. Where performance requires specific action Officers will refer to the standard conditions for the process to be followed and engage with legal and procurement if required.

11.5 Regular checking of the “contract register”, contact with the procurement and running reports on provider spend assist in the monitoring of procurement activity.

12 Externally Audited Procurement Activity

12.1 Whenever funding is provided to the Council by external organisations for large grant schemes, there is an expectation that the funding will be used for the purposes provided and an external audit process ensures that those requirements are met and that the procedures used within the procurement process are robust.

12.2 The Housing Support Grant and the Children and Community Grant is audited externally as a Welsh Government requirement and carried out by the Welsh Audit Office

12.3 The last audit occurred prior to the pandemic and both were approved with only minor recommendations.

12.4 The Council’s in-house audit team regularly audits social Care procurement activity.

13 The effect leaving the European Union on procurement activities

- 13.1 Leaving the European Union on 31st. January, 2020 heralded a major change in the rules and regulations relating to procurement. Whilst 'Brexit' has undoubtedly led to issues with supplies and with increased costs, the concurrent effect of the Covid-19 pandemic has also created issues which have compounded the current situation.
- 13.2 The Re-balancing the Sector white paper also proposes reducing obligations on LAs in relation to procurement of social care services but to date has provided no detail as to how or when that will occur. WG advises that further consultation on this is intended.

14 Improvements to Councils procurement practices

- 14.1 The Council has developed a robust and detailed set of Contract Procedure Rules for use in its procurement activities. However, there is always an opportunity for further integration and improvement by learning lessons from current best practice.
- 14.2 Commissioning teams within the Directorate were not created or resourced to procure in the way that is currently required
- 14.3 Continued regular training around procurement and TUPE combined with greater experience will lead to procurement that is more effective. Timeliness may depend on the team's capacity to complete the commissioning processes undertaken to inform procurement activity.
- 14.4 These commissioning processes are often disrupted by the need to address immediate operational pressures. Improving commissioning processes will lead to timelier re-procurement.
- 14.5 Developing a better understanding of social value, and adapting procurement practices to do more to promote social value organisations could help to achieve objectives under s16 SSWBA and WBFGA.
- 14.6 Designing contract specifications which are outcomes focussed where possible is an ongoing challenge.
- 14.7 Maximising opportunities to involve service users and citizens in the procurement process will lead to more collaborative, co-produced services.

15 Conclusions/Key Points Summary

- 15.1 To addresses requirements of the Social Services and Wellbeing Act and ensure procurement practice supports the delivery of Health and Social care services we would be seeking to develop an integrated approach which builds and shares expertise between commissioners, procurement and contract management.

- 15.2 This would help us progress transformation at pace, not only locally but on a regional footprint, to enable us to make the changes required to drive forward modern, outcome based collaborative procurement for the benefits of the people across all client groups and communities in Swansea.
- 15.3 The impact of the UK Governments Green Paper on Procurement Reform is currently an unknown factor, the decision by the Welsh Government to follow the UK Government in terms of procurement reform will have an effect on this area. The published Green Paper by the UK Government indicated the removal of the Light Touch Regime from the new rules, this can have a huge impact on the work currently being undertaken and one that could result in more contracts coming into scope of the full rules. If this is the case both Commissioning and Procurement Teams which are currently under resourced could have additional pressures upon them due to this proposed change. The Category Manager will keep abreast of development and will work closely with the Strategic Lead Commissioner to understand the effects and any changes that are needed.

14. Legal implications

- 14.1 There are no legal implications associated with this report other than those set out in the body of the report.

15. Finance Implications

- 15.1 There are no financial implications associated with this report

Background papers: *None*

Appendices:

Appendix 1: Process map for procuring services